STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED January 12, 2012
In the Matter of CROOKS, Minors.	No. 304583 Wayne Circuit Court Family Division LC No. 05-447664
In the Matter of CROOKS, Minors.	No. 304584 Wayne Circuit Court Family Division LC No. 05-447664

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, respondent B. Nagy (mother) and respondent D. Crooks (father) appeal as of right from the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

Mother challenges the trial court's determination that the statutory grounds for termination were established by clear and convincing evidence. She also challenges the trial court's assessment of the children's best interests under MCL 712A.19b(5). We review the trial court's findings concerning both the statutory grounds for termination and the children's best interests for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

With respect to § 19b(3)(c)(*i*), the trial court appropriately considered all relevant circumstances, including mother's history of mental illness, in evaluating the conditions that led to the adjudication of the two older children, and the subsequent adjudication of the younger sibling. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Those conditions involved environmental neglect, lack of proper supervision of the children, and unsafe and unsanitary conditions in the home. The proceedings in this case lasted more than five years. Mother's argument on appeal challenges whether the services that were offered during that time period were reasonable. The reasonableness of those services are relevant because they may affect the

sufficiency of the evidence in support of the statutory grounds for termination. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

Mother waived any claim that the Department of Human Services (DHS) violated the Americans with Disabilities Act, 42 USC 12101 *et seq.*, because she never raised that issue in the trial court. *In re Terry*, 240 Mich App 14, 26 n 5; 610 NW2d 563 (2000). Further, the record does not support mother's argument that DHS failed to account for her mental illness or otherwise failed to make reasonable efforts to reunify her with her children. Mother's case-service plan included extensive in-home and out-of-home services, including therapy, psychiatric evaluations, and parenting classes, to address her mental illness and parental deficiencies. Mother also had the benefit of a psychiatrist to monitor and prescribe medication to help her manage her mental illness. She was required to establish a support system as part of the initial case-service plan, and initially presented the children's maternal grandmother as someone who was available to assist her.

In-home services were continued through the Judson Center even after the children were returned to respondents' home on a full-time basis in 2010. The fact that a foster care worker from the Ennis Center for Children reduced the number of visits in order to assess respondents' parenting abilities without supervision, with the trial court's approval, does not establish that the DHS was at fault for the conditions found by a Children's Protection Services (CPS) worker approximately two weeks later. The CPS investigation revealed domestic violence, physical neglect, and improper supervision of the children in the home. Both respondents later tendered no-contest pleas to a petition to remove the children from the home. After those pleas, the progress of both respondents continued to deteriorate, and resulted in the filing of the second petition seeking to terminate their parental rights.

Considering the record as a whole, the trial court did not clearly err in finding that § 19b(3)(c)(*i*) was established by clear and convincing evidence. Mother's failure to sufficiently benefit from the in-home and other services offered to her over more than five years demonstrates that she was not reasonably likely to benefit from continued services to a point where she could properly care for the children, and that the children would be at risk of harm in the home. Thus, the evidence also supports the trial court's determination that §§ 19b(3)(g) and (j) were both established. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Furthermore, considering the children's emotional and behavioral problems, the length of time they had been temporary court wards, mother's lack of benefit from services, and other evidence in the record, the trial court did not clearly err in finding that it was in the children's best interests to terminate mother's parental rights. MCL 712A.19b(5); *In re Jones*, 286 Mich App at 129.

Father argues that DHS's actions at the onset of this case regarding placement of the children violated MCR 3.965 and MCL 712A.13b. Father contends that the children's maternal grandmother was a suitable caregiver for the children, and that the children should not been have removed from the grandmother's home based on a history of CPS complaints against her in 1983 and 1989.

The record indicates that only the youngest child was removed from the grandmother's home, which occurred in February 2006, after it was discovered that the grandmother was listed in the central registry under another name because of the CPS complaints in 1983 and 1989.[1] However, that same month, the trial court ordered the child to be returned to the maternal grandmother's home and also directed that the two older children be placed in her home, subject to her participation in an evaluation by the Clinic for Child Study. Because the children were placed with the maternal grandmother pursuant to a court order, father's challenge to DHS's removal or placement actions before that court-ordered placement is moot. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). Furthermore, father's parental rights were terminated more than five years later, and there is no basis for concluding that the DHS's initial placement actions during the early stages of the proceeding affected that decision. Accordingly, this issue does not present a basis for relief.

Father also argues that the trial court's termination decision was not supported by clear and convincing evidence. After reviewing the record, we find no basis for disturbing the trial court's findings that the statutory grounds for termination were established, and that termination of father's parental rights was in the children's best interests. Father was provided with extensive services over a five-year period to address his mental illness and parental deficiencies, but was unable to benefit from those services to a point where the children would not be at risk of harm in his home. *In re Gazella*, 264 Mich App at 676-677.

We find no merit to father's argument that he was deprived of due process because DHS created the conditions that led to the termination of his parental rights. See *In re B & J*, 279 Mich App 12, 19; 756 NW2d 234 (2008). In Michigan, procedures to ensure due process to a parent facing termination of parental rights are set forth in statutes, court rules, DHS policies and procedures, and various federal laws. *In re Rood*, 483 Mich 73, 93; 763 NW2d 587 (2009) (opinion of CORRIGAN, J.). Consistent with due process, DHS may not create a condition that establishes a statutory basis for termination under MCL 712A.19b(3). That is, DHS may not take deliberate action with a purpose of virtually assuring the creation of a statutory ground for termination, and then seek to terminate parental rights on that ground. *In re B & J.*, 279 Mich App at 19-20. Factually, the record does not support father's argument that DHS created the conditions that established the statutory grounds for termination. Father has not established that CPS acted improperly in 2006 when it investigated allegations that father physically abused one of the children during their placement with the maternal grandmother, nor has he established anything about that investigation that could viewed as creating or contributing to the grounds for termination in 2011.[2]

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[1] The central registry was established as part of the Child Protection Law, MCL 722.621 *et seq.* It permits a person to request expunction of a report or record from the central registry "in which no relevant and accurate evidence or abuse or neglect is found to exist." MCL 722.27(5).

[2] Contrary to what father argues, the record does not indicate that the maternal grandmother surrendered all three children to DHS for placement outside her home. Rather, she relinquished

Lastly, to the extent that father argues that a guardianship with the maternal grandmother might have been appropriate, no basis for relief has been shown. A guardianship with a relative in lieu of termination may be appropriate if a parent's ongoing relationship with a child is in the child's best interests. *In re Mason*, 486 Mich 142, 168-169; 782 NW2d 747 (2010). In this case, however, neither respondent proposed at the termination hearing that a guardianship be established with the maternal grandmother, and there was no evidence that the maternal grandmother was willing to act as a guardian. Accordingly, the trial court did not err by not considering that option. Considering the children's need for permanency, the trial court did not clearly err in finding that termination of father's parental rights was in the children's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

custody of two of the children and continued to care for the oldest child in her home, and the parties later stipulated that all three children would be placed with a paternal aunt.